IN THE COURT OF MS. SURABHI SHARMA VATS: ADDITIONAL SESSIONS JUDGE-04: SHAHDARA: KKD COURTS: DELHI.

Criminal Appeal No. 42/2025

In the matter of:

Baljeet Singh
S/o Late Sh. Sadhu Singh
R/o H. No. 49, 2nd Floor,
Krishna Nagar, Delhi–110051 ..... **Appellant**

Versus

Roshan Gupta
S/o Sh. Banarsi Dass Gupta
R/o H. No. 333, Triveni Apartment,
Jhilmil Colony, Delhi–110095 ..... **Respondent**

Date of Institution	:	**17.04.2025**
Order reserved on	:	**15.04.2026**
Order delivered on	:	**13.05.2026**

JUDGMENT

1. Vide this Judgment, this Court shall dispose of an Appeal filed under Section 374(3) Cr.P.C seeking setting aside the impugned judgment dated 08.01.2025 passed by the Ld. JMFC (NI Act), Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as Ld. Trial Court) in a complaint case bearing no. CC NI Act 859/2022 titled as *'Roshan Gupta Vs. Baljeet Singh'* under Section 138 NI Act whereby, appellant/ accused Baljeet Singh was convicted under Section 138 N.I. Act and was sentenced to pay fine equal to the cheque amount alongwith an additional fine of Rs. 40,000/- (including interest component as well as legal charges) totalling to Rs. 1,85,000/- and it was directed that the convict/appellant shall pay full amount of Rs. 1,85,000/- to the complainant under Section 357 (3) Cr.P.C. within thirty days from the date of order and failing which, the convict was

also sentence to undergo simple imprisonment of one month in default.

2. Succinctly stated, the case of the complainant/respondent, as per the complaint under Section 138 of the Negotiable Instruments Act, is that the appellant/accused and the complainant were known to each other and had cordial relations; that in the month of November, 2019, the appellant approached the complainant and requested for a friendly loan of Rs. 1,45,000/- on account of his urgent financial needs; that the complainant, relying upon the representations and assurances of the appellant, advanced the said amount to him; that at the time of taking the loan, the appellant assured the complainant that the amount would be repaid within a period of six months; that in discharge of his legally enforceable liability, the appellant issued cheque bearing no. 000002 dated 12.01.2022 for a sum of Rs. 1,45,000/- drawn on HDFC Bank Ltd. in favour of the complainant; that at the time of issuance of the said cheque, the appellant assured that the same would be honoured upon presentation; that the complainant presented the said cheque within its validity period with his banker, however, the cheque was returned unpaid and dishonoured with the remarks "Account Closed" vide return memo dated 08.03.2022; that thereafter, the complainant contacted the appellant and requested him to make payment of the cheque amount, however, despite repeated requests, the appellant failed to make the payment; consequently, the complainant issued a legal demand notice to the appellant within the statutory period calling upon him to make payment of the cheque amount within 15 days from the date of receipt of the notice; that the said legal notice was duly sent at the correct address of the appellant; that despite service of the legal notice, the appellant neither replied to the same nor made the payment of the cheque amount within the stipulated period; that

consequently, the complainant was constrained to file the present complaint under Section 138 of the Negotiable Instruments Act before the Ld. Trial Court.

3. On the complaint of the complainant/ respondent, the Ld. Trial Court took cognizance of the offence punishable under Section 138 N.I. Act and accused/ appellant was summoned; a notice of substance of accusation under Section 251 Cr.P.C. was framed against the accused/ appellant on 22.03.2023 to which he pleaded not guilty and claimed trial. Complainant examined himself as CW-1 and relied upon his evidence by way of an affidavit Ex.CW1/1, wherein averments made in the complaint were reiterated and the complainant relied upon various documents i.e. Ex.CW1/A to Ex.CW1/I (OSR).

4. LIST OF DOCUMENTS TENDERED/ RELIED UPON BEFORE THE TRIAL COURT :-

Sr. No.	DOCUMENTS	EXHIBITS
1.	Evidence by way of affidavit of CW-1	Ex.CW1/1
2.	Original Cheque bearing no. 000002	Ex.CW1/A
3.	Return Memo dated 08.03.2022	Ex.CW1/B
4.	Legal Notice dated 11.03.2022	Ex.CW1/C
5.	Original Postal receipts	Ex.CW1/D &E
6.	Tracking Reports	Ex.CW1/F & G
7.	Copy of Aadhar Card of the complainant	Ex.CW1/I

5. During the statement under Section 313 Cr.P.C., the appellant/ convict admitted the issuance of the cheque in question and stated that the said cheque was issued alongwith another cheque as a blank security

cheque. The accused/appellant/convict chose not to lead evidence in defence and accordingly, the matter was fixed for final arguments.

6. Thereafter, final arguments were heard by the Ld. Trial Court and the Ld. Trial Court vide its impugned judgment dated 08.01.2025 convicted the appellant/convict under Section 138 N.I. Act and convict/appellant was sentenced to pay fine equal to the cheque amount alongwith an additional fine of Rs. 40,000/- (including interest component as well as legal charges) totaling to Rs. 1,85,000/- and it was directed that the convict/appellant shall pay full amount of Rs. 1,85,000/- to the complainant under Section 357 (3) Cr.P.C. within thirty days from the date of order and failing which, the convict was also sentence to undergo simple imprisonment of one month in default.

7. Being aggrieved by the impugned Judgment dated 08.01.2025 and Order on sentence dated 10.03.2025 passed by the Ld. Trial Court/Ld. JMFC, Shahdara District, Karkardooma Courts, Delhi, the appellant/ convict has presented this appeal on the following grounds (sum & substance of the grounds is as follows) :-

a) that the Ld. Trial Court failed to consider that complainant/respondent had not given any proof of payment of huge amount of a sum of Rs. 1,45,000/-;

b) that the Ld. Trial Court has failed to consider that appellant/convict has paid interest @ 5% on the sum of Rs. 60,000/- and had already paid more than 2 lakhs in five years;

c) that the Ld. Trial Court did not exercise discretion properly and judiciously and the benefit of the doubt is always given to the accused.

8. On these grounds, appellant has prayed for setting aside the impugned judgment dated 08.01.2025 and consequent order on sentence dated 10.03.2025.

9. Arguments on behalf of Ld. Counsel for Appellant/convict and Ld. Counsel for respondent heard. This Court has also perused the entire record of Learned Trial Court including impugned Judgment dated 08.01.2025 as well as order on sentence dated 10.03.2025.

10. In the instant case at hand, the appellant/ convict has not disputed his signatures on the cheque. The respondent has placed on record Evidence by way of affidavit (Ex.CW1/1), Original Cheque bearing no. 000002 (Ex.CW1/A), Return Memo dated 08.03.2022 (Ex.CW1/B), Legal Notice dated 11.03.2022 (Ex.CW1/C), Original Postal receipts (Ex.CW1/D &E), Tracking Reports (Ex.CW1/F & G). Further, it is also not disputed that appellant/convict has issued the cheque in question and also admitted his signatures on the same, however, he has claimed that he had issued the same alongwith another cheque as a blank security cheque.

11. Section 139 of Negotiable Instruments Act, 1881 is reproduced herein, for ready reference :-

Section 139 - *Presumption in favour of holder.*— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

12. Under Section 139 of the NI Act, unless the contrary is proved, the holder of a cheque shall be presumed to have received the cheque in

discharge of any debt or other liability. Sub clause (a) of Section 118 of the NI Act, *inter-alia* provides that unless the contrary is proved, a drawn up negotiable instrument, if accepted, has to be presumed, to be for consideration. Thus, the Court shall presume that the instrument was endorsed for consideration.

13. In judgment titled as '**Rangappa Vs. S. Mohan', Crl. Appeal No. 1020 of 2010**, decided on 07.05.2010, the Hon'ble Supreme Court of India has observed that :

> *"17. In the course of the proceedings before this Court, the contentions related to the proper interpretation of Sections 118(a), 138 and 139 of the Act. Before addressing them, it would be useful to quote the language of the relevant provisions:*
>
> *118. Presumptions as to negotiable instruments. -*
>
> *Until the contrary is proved, the following presumptions shall be made:*
>
> *(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration; ...*
>
> *138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.*
>
> *(b) the payee or the holder in due course of the cheque, as the*

case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, debt or other liability' means a legally enforceable debt or other liability.

139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt, or other liability. 9. 18. Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act. With respect to the facts of the present case, it must be clarified that contrary to the trial court's finding, Section 138 of the Act can indeed be attracted when a cheque is dishonoured on account of `stop payment' instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account."

14. In another judgment titled as '**Krishna Janardhan Bhat Vs. Dattatraya G. Hegde**' decided on 11 January, 2008, Appeal (Crl.) 518 of 2006, the Hon'ble Supreme Court of India has held that :

"Section 138 of the Act has three ingredients, viz.:
(i) that there is a legally enforceable debt;
(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which pre- supposes a legally enforceable debt; and
(iii) that the cheque so issued had been returned due to insufficiency of funds.

21. The proviso appended to the said section provides for compliance of legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has

been issued for discharge of any debt or other liability.

23. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.

24. In ***Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal*** *[(1999) 3 SCC 35] interpreting Section 118(a) of the Act, this Court opined: Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non- existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt [Emphasis supplied]*

25. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.

26. A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other

evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative."

15. In the present case at hand, the appellant has admitted issuance of cheque to the complainant in Notice of substance of accusation under Section 251 Cr.P.C as well as in his statement recorded under Section 313 Cr.P.C. The cheque return memo also stands admitted. It is trite law that once the issuance of cheque and signature on cheque stands admitted/ proved, the presumption U/s 139 of Negotiable Instruments Act comes into play. This presumption is a 'rebuttable' presumption and the accused issuing the cheque is at liberty to prove to the contrary.

16. The onus to raise and prove a probable defence would lie on the accused since the law under Negotiable Instruments Act raises presumption in the favour of the holder of the cheque that the cheque in question (which has been returned as dishonored) was issued in respect of debt or liability. Though, it is well settled that the standard of proof upon the accused to rebut the presumptions is that of preponderance of probability and for that something which is probable, needs to be brought on record. Furthermore, an accused for discharging the burden of proof placed upon him under a statute, need not examine himself. Accused may discharge this burden even on the basis of the materials already brought on records.

17. In the present case, one of the principal defences raised by the appellant is regarding alleged non-service of the statutory legal notice. It has been contended that the appellant was never served with the legal demand notice. This contention has been duly examined by the Ld. Trial

Court and rightly rejected for cogent and convincing reasons. The appellant merely denied receipt of the notice, however, mere denial of receipt does not rebut the statutory presumption of service once dispatch at the correct address is proved.

17.1. Perusal of the record reveals that convict/appellant has himself admitted in notice under Section 251 Cr.P.C. that the address mentioned in the legal demand notice is correct. The complainant proved on record the legal notice dated 11.03.2022 (Ex.CW1/C) along with the postal receipts (Ex. CW1/D & E), thereby establishing due dispatch of the notice. The appellant cannot be permitted to approbate and reprobate by accepting the address as correct and disputing the service only to avoid the legal consequences arising under Section 138 of the Negotiable Instruments Act.

17.2. It is a settled position of law that once the complainant proves that the legal notice was duly dispatched at the correct address of the drawer, a presumption of service arises. The burden thereafter lies heavily upon the accused to rebut this presumption by leading credible evidence, which the appellant has completely failed to do in the present case. No material whatsoever has been placed on record to show that the address was incorrect or that the notice could not have been served.

17.3. Even otherwise, the defence of non-service of legal notice is of no avail to the appellant. It is well settled that even if the drawer claims non-receipt of the legal notice, the cause of action under Section 138 of the NI Act is not defeated, provided the drawer fails to make payment of the cheque amount within fifteen days of receiving summons from the Court. In the present case, despite having full knowledge of the proceedings and despite being served with summons, the appellant admittedly did not make payment of the cheque amount at any stage. Such conduct squarely attracts

the mischief of Section 138 of the NI Act and renders the plea of non-service wholly inconsequential. The plea of non-service of legal notice, therefore, is not only legally untenable but also appears to be a desperate afterthought, raised solely with an intent to frustrate the mandate of law.

18. Another defence raised by the appellant is that the cheque in question was issued as a blank signed security cheque to the complainant/ respondent against an alleged loan of only Rs. 60,000/-, which was received by the appellant/convict. It is further contended that certain payments had already been made towards the said liability. This defence has been thoroughly examined by the Ld. Trial Court and has been rightly rejected. This Court finds itself in complete agreement with the findings so recorded.

18.1 It has been alleged that the appellant/convict had taken only Rs. 60,000/- from the respondent/complainant and had made partial repayments towards the same, however, no material has been placed on record to substantiate this plea. This defence plea, however, amounts to the admission of monetary transactions between the parties. Furthermore, the appellant/convict, in his statement under Section 251 Cr.P.C., has admitted his willingness to pay the cheque amount in question, which further lends credence to the case of the complainant.

18.2 As far as plea of that cheque was issued as a blank security cheque is concerned. Except for a self-serving assertion, the appellant has failed to show or prove that the cheque was not supported by consideration, that no legally enforceable debt existed on the date of issuance, or that there was no occasion for enforcement of the alleged security. The mere description of a cheque as a security cheque is not a panacea to escape

criminal liability. Law is well settled that even a cheque issued as security would attract the rigours of Section 138 of the Negotiable Instruments Act once the underlying liability exists and the cheque is dishonoured. The appellant has utterly failed to dislodge this position.

18.3. At this juncture, this Court deems it apposite to quote a judgment titled as **'V. S. Yadav Vs. Reena', Crl. Appeal No.1136 of 2010 decided on 21.09.2010**, in which Hon'ble High Court of Delhi has observed that :

> *"5. It must be borne in mind that the statement of accused under Section 281 Cr. P.C. or under Section 313 Cr. P.C. is not the evidence of the accused and it cannot be read as part of evidence. The accused has an option to examine himself as a witness. Where the accused does not examine himself as a witness, his statement under Section 281 Cr. P.C. or 313 Cr. P.C. cannot be read as evidence of the accused and it has to be looked into only as an explanation of the incriminating circumstance and not as evidence. There is no presumption of law that explanation given by the accused was truthful. In the present case, the accused in his statement stated that he had given cheques as security. If the accused wanted to prove this, he was supposed to appear in the witness box and testify and get himself subjected to cross examination. His explanation that he had the cheques as security for taking loan from the complainant but no loan was given should not have been considered by the Trial Court as his evidence and this was liable to be rejected since the accused did not appear in the witness box to dispel the presumption that the cheques were issued as security. Mere suggestion to the witness that cheques were issued as security or mere explanation given in the statement of accused under Section 281 Cr. P.C., that the cheques were issued as security, does not amount to proof. Moreover, the Trial Court seemed to be obsessed with idea of proof beyond reasonable doubt forgetting that offence under Section 138 of N.I. Act is a technical offence and the complainant is only supposed to prove that the cheques issued by the respondent were dishonoured, his statement that cheques were issued against liability or debt is sufficient proof of the debt or liability and the onus shifts to the respondent/ accused to show the circumstances under which the cheques came to be issued and this could be proved by the respondent only by way of evidence and not by leading no evidence.*
>
> *Mere pleading not guilty and stating that the cheques were*

issued as security, would not give amount to rebutting the presumption raised under Section 139 of N.I. Act. If mere statement under Section 313 Cr. P.C. or under Section 281 Cr. P.C. of accused of pleading not guilty was sufficient to rebut the entire evidence produced by the complainant/ prosecution, then every accused has to be acquitted. But, it is not the law. In order to rebut the presumption under Section 139 of N.I. Act, the accused, by cogent evidence, has to prove the circumstance under which cheques were issued."

18.4 In the case titled as **'Suresh Chandra Goyal Vs. Amit Singhal'**, CRL.L.P. 706/2014 decided on 14.05.2015, it has been observed by the Hon'ble High Court of Delhi that:

"…...28. There is no magic in the word "security cheque", such that, the moment the accused claims that the dishonoured cheque (in respect whereof a complaint under Section 138 of the Act is preferred) was given as a "security cheque", the Magistrate would acquit the accused. The expression "security cheque" is not a statutorily defined expression in the NI Act. The NI Act does not per se carve out an exception in respect of a 'security cheque' to say that a complaint in respect of such a cheque would not be maintainable. There can be mirade situations in which the cheque issued by the accused may be called as security cheque, or may have been issued by way of a security, i.e. to provide an assurance or comfort to the drawee, that in case of failure of the primary consideration on the due date, or on the happening (or not happening) of a contingency, the security may be enforced. While in some situations, the dishonor of such a cheque may attract the penal provisions contained in Section 138 of the Act, in others it may not…."

19. Another plea raised by the appellant is that he has already paid a substantial amount to the complainant. There is nothing on record to support this plea of the appellant and the appellant also failed to produce any documents to support his contention. It is a trite law that unsubstantiated contentions without any cogent proof or material cannot stand upon its own legs.

20. In view of the foregoing discussion, it can be safely held that the Ld. Trial Court has meticulously analysed every aspect of the matter, applied the correct legal principles, and returned findings which are supported by evidence on record. The Appellant has undoubtedly, failed to rebut the presumption u/s. 139 of N.I Act that the cheque in question was not issued to discharge a debt/liability. This Court finds no perversity or error of law in the impugned judgment dated 08.01.2025.

21. As far as the impugned Order on Sentence dated 10.03.2025 passed by the Ld. Trial Court is concerned. It is undisputed that under Section 138 of the Negotiable Instruments Act, the maximum punishment prescribed is imprisonment for a term which may extend to two years, or fine which may extend to twice the amount of the cheque, or both. In the present case, the Ld. Trial Court has sentenced the appellant/convict to pay fine equal to the cheque amount alongwith an additional fine of Rs. 40,000/- (including interest component as well as legal charges) totaling to Rs. 1,85,000/- and it was directed that the convict/appellant shall pay full amount of Rs. 1,85,000/- to the complainant under Section 357 (3) Cr.P.C. within thirty days from the date of order and failing which, the convict was also sentence to undergo simple imprisonment of one month in default.

So far as the legality of the order on sentence dated 10.03.2025 is concerned, this Court finds no illegality, perversity or jurisdictional error therein. The sentence awarded is well within the statutory limits, therefore, no interference is required, and accordingly, order on sentence dated 10.03.2025 is also upheld.

It is, however, clarified that at the time of execution of sentence, the payment made, if any, by the appellant/convict be adjusted. The complainant/ respondent is at liberty to take appropriate steps to get

execute the sentence.

22. The accused/convict is directed to surrender before the Ld. Trial Court for execution of his sentence.

23. A copy of this order alongwith Trial court record be sent to Ld. Trial Court. Appeal file be consigned to record room.

Announced in the open court
on 13.05.2026

(SURABHI SHARMA VATS)
ASJ-04/Shahdara/KKD Courts
Delhi/13.05.2026